

ORIGINAL

EX PARTE OR LATE FILED

RECEIVED

MAR 17 2000



Frank S. Simone
Government Affairs Director

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
FAX 202 457-2545
EMAIL fsimone@att.com

March 17, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. - Room TWB-204
Washington, D. C. 20554

Re: Ex parte, CC Docket No. 00-4, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Texas

Dear Ms. Salas:

On Friday, March 17, 2000, the attached compilation of previously filed ex parte submissions by AT&T in this proceeding, together with a brief summary of the topic contained in each filing, was forwarded to Dorothy Attwood, Kyle Dixon, Jordan Goldstein, Helgi Walker and Sarah Whitesell, all Legal Assistants to the FCC Commissioners. Rather than attach each of the previously filed letters, I have provided here the summary document and will list below the ex parte submissions included in the material provided to the Legal Assistants mentioned above.

1. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from Patrick R. Cowlshaw, Cohan Simpson Cowlshaw and Wulff, on behalf of AT&T, ("in response to SBC submittals of performance data"), CC Docket No. 00-4, March 6, 2000.
2. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from David F. Wertheimer, Davis Weber and Edwards, on behalf of AT&T, ("respond to several assertions...that concern SWBT's provisioning of UNE loop hot cuts"), CC Docket No. 00-4, March 6, 2000.
3. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from James L. Casserly, Mintz Levin Cohn Ferris Glovsky and Popeo, on behalf of AT&T, ("respon[se] to several assertions...regarding the offering by CLECs of voice and xDSL service over an unbundled loop obtained from SBC."), CC Docket No. 00-4, March 3, 2000.
4. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from John A. Redmon, Davis Weber and Edwards, on behalf of AT&T, ("respond to legal ad factual assertions about the Operations Support Systems"), CC Docket No. 00-4, March 8, 2000.
5. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from David F. Wertheimer, Davis Weber and Edwards, on behalf of AT&T, ("respond to several new legal arguments by Southwestern Bell Telephone Company ("SWBT")...in defense of its collocation offerings."), CC Docket No. 00-4, March 8, 2000.

No. of Copies rec'd 012
List ABCDE



Recycled Paper

RECEIVED
MAR 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

6. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from Mark C. Rosenblum, President-Law, AT&T, ("respond to legal and factual assertions about pricing of unbundled network elements...by SBC"), CC Docket No. 00-4, February 29, 2000.
7. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from Frank S. Simone, Government Affairs Director, AT&T, ("respond to Southwestern Bell Telephone Company's claims...that it complies with the requirements of § 272."), CC Docket No. 00-4, March 8, 2000.
8. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from James L. Casserly, Mintz Levin Cohn Ferris Glovsky and Popeo, on behalf of AT&T, ("respond to the assertions...regarding SWBT's interconnection requirements."), CC Docket No. 00-4, March 8, 2000.
9. Letter to Ms. Magalie Roman Salas, Secretary, FCC, from Albert M. Lewis, Federal Government Affairs Vice President, AT&T, ("letter discusses a recent decision by the United States Court of Appeals for the Fourth Circuit"), CC Docket No. 96-98; CCBPol 97-4, Petition of MCI for Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Network Elements, December 29, 1999.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,



ATTACHMENT

cc: D. Attwood
K. Dixon
J. Goldstein
H. Walker
S. Whitesell

SWBT has submitted an enormous amount of material in post-application filings in this proceeding.¹ This, in turn, has required a large number of responsive *ex parte* filings by other parties. In an attempt to assist the Commission in assessing some of the most significant issues raised by these materials, this document includes a compilation of recent *ex parte* submissions by AT&T, along with a brief summary of the showings made in each, as set forth below:

1. Loop Hot Cuts. SWBT provides access to unbundled loops via two hot cut processes -- its "Coordinated Hot Cut" ("CHC") process and its "Frame Due Time" ("FDT") process. As SWBT admits, only the FDT process is potentially capable of supporting commercial volumes.

SWBT's January 10 Application was based on August to October performance data that related only to its CHC process. SWBT then submitted December data (in a January 21 *ex parte*) that provided limited information on SWBT's FDT process. SWBT next submitted January data (in a February 25 *ex parte*) concerning FDT performance based on newly implemented performance measures. Finally, SWBT admitted (in a March 2 *ex parte*) that its previously filed December and January FDT and CHC performance data was materially wrong, and purported to restate that data.

SWBT's most recent version of the data continues to suffer from obvious errors. Moreover, SWBT's suggestion that the Commission should rely on its latest data based solely on SWBT's conclusory, unsworn assertion that its restated data is now correct is misplaced -- particularly in light of the consistent errors in SWBT's prior reported performance data. As AT&T has previously shown, SWBT has never before -- in the five months between August and December -- provided accurate data on its hot cut performance. Even if SWBT's latest data were both timely and reliable, it still fails to meet the "minimally acceptable" level of performance required in the Commission's BA-NY Order because, among other things: (a) it fails to provide any performance data on outages due to defective loop cuts for either FDT or CHC hot cuts; (b) its "restated" data continues to fail to meet the standards set by this Commission (and the TPUC) for cutover performance; and (c) it fails to provide performance data on trouble report rates for FDT and CHC hot cuts.

The TPUC's determination does not change this analysis. Among other things, its conclusion that SWBT's performance was acceptable relies on SWBT's August-October CHC cutover data, which SWBT has now conceded was based on a non-randomized sample that lacked statistical integrity, and which SWBT has now, in effect, jettisoned in favor of the more recent data it has submitted in its *ex partes*. In addition, the TPUC, in its Reply Comments, relied on SWBT's reported FDT and CHC cutover performance data for December -- which SWBT now admits is materially incorrect.

¹ SWBT has submitted thousands of pages of *ex parte* materials that touch on virtually every issue raised in this proceeding. By constantly submitting new and revised data, and raising new "facts" and arguments, SWBT has deprived all parties of a fair opportunity to comment on its Application, and has prevented the Commission from conducting the thorough evaluation that is contemplated by the Act. Thus, while the TPUC voted to recommend approval of SWBT's Application on December 16, 1999, that recommendation was based on "facts" which, in some cases, SWBT has now conceded are wrong (e.g., certain UNE loop and DSL performance data), while in other cases, SWBT now relies on facts that were never made available to the TPUC (e.g., SWBT's new, unreconciled UNE loop data submitted in early March). The DOJ has specifically urged that post-filing data not be considered "[b]ecause of the limitations of time and information, and because of the critical need to protect the fairness and efficacy of the Commission's process". DOJ Evaluation at 3.

2. **DSL**. SWBT refuses to allow CLECs to provide voice and xDSL services over a single unbundled loop in the same way that SWBT does. In particular, SWBT provides itself unique access to the loop by splitting the line over which it provides voice services and attaching its advanced services equipment to one portion of the split line. SWBT refuses to split the line so that CLECs can access the loop and attach their equipment to it in the same way that SWBT does. Moreover, SWBT uses the illicit advantage it has obtained for itself in connection with xDSL services by terminating its offering of xDSL services to any customer that chooses a CLEC for voice services provided using a combination of UNE loops and switching. SWBT's admitted objective is to be the only carrier capable of providing both voice and data services. The TPUC has failed to address these issues.

3. **OSS. Pre-Ordering**. SWBT's "address validation" process is defective, and SWBT has failed to meet its legal obligation to provide parsed address information in pre-ordering, thereby preventing CLECs from achieving parity integration of SWBT's pre-ordering and ordering interfaces. For the first time in its Reply Comments, SWBT has claimed that Sage Telecom has achieved very low address-related error rates by (1) using a pre-order process which bypasses SWBT's "address validation" function, and (2) writing a parsing routine that converts unparsed CSR addresses into a parsed format. However, Sage has achieved its assertedly low address-related reject rates (1) by ignoring SWBT's documented pre-ordering requirements and eliminating SWBT's error-ridden "address validation" process from its pre-ordering, and (2) by developing its own routines for parsing address data from SWBT's Customer Service Record ("CSR") -- which is not the address data source that SWBT's pre-ordering documentation requires CLECs to use. SWBT cannot now legitimately argue that CLECs must ignore SWBT's own documented pre-ordering processes. Rather, it must fix the process it has required CLECs to follow, or provide CLECs the necessary time to work with SWBT to determine and implement appropriate OSS requirements.

The TPUC's findings are not to the contrary. The TPUC never conducted functionality testing of the ability to integrate and stated that it is the TPUC's "understanding . . . that integrative functions have been accomplished by multiple CLECs." But only Sage Telecom has reportedly integrated preorder and ordering functions using Datagate, and it has done so by ignoring, rather than following, SWBT's documented requirements.

Outages. The TPUC, in its Reply, offers an Affidavit from Telcordia which -- 11 months after the fact -- seeks to "revise" the 11% outage rate that it previously found in the Texas OSS test to levels that are more supportive of SWBT's Application. Telcordia's new affidavit is riddled with error, does nothing to undercut Telcordia's prior report that SWBT has experienced unacceptable outage rates in provisioning CLEC orders, and is beyond the narrow scope of the work that Telcordia has claimed it did in the Texas OSS test.

Other OSS Issues. AT&T's OSS Ex parte submission also responds to a number of other new matters raised by SWBT in its Reply and in various Ex parte submissions, and shows that: (1) SWBT fails to provide UNE-based CLECs with parity error detection capabilities; (2) SWBT's overall reject rates on electronic orders are excessive; (3) SWBT fails to provide effective change management in connection with new EDI releases (most recently its January 15,

2000 release), due, among other things, to its defective test environment; and (4) the Texas OSS testing was ineffective.

4. Performance Measures. SWBT's performance (especially on "Tier 2" measures, described by the TPUC as the "most critical, customer and competition-affecting measures") is deteriorating. The data show that SWBT consistently fails one of every five Tier 2 measures; that SWBT's pass rate for Tier 2 "High" performance measures (*i.e.*, the most important of the most important measures) has deteriorated from 91.3% in June 1999 to 83.2% in January 2000; that SWBT's January statewide performance across all measures was its worst in six months; and that SWBT's own post-Application data tend to refute efforts by both SWBT and the TPUC to explain parity violations in such key areas as DSL-capable loops, UNE-L hot cuts, billing and interconnection trunking. The TPUC has not addressed this evidence in this proceeding, and its State review of AT&T's backsliding concerns will not take place until after the time when this Commission must issue an order in this proceeding. Further, SWBT fails, and the TPUC does not mention in its Reply, the test of nondiscriminatory performance that the TPUC incorporated in its Memorandum of Understanding with SWBT -- *i.e.*, 90% of the Tier 2 measurements must show compliance for 2 out of 3 months. Finally, the demonstrated flaws in SWBT's performance data and SWBT's continual corrections to such data confirm the DOJ's concern that the deficiencies in SWBT data "may be symptomatic of more serious problems in the reliability of SBC's performance measurements systems and processes." DOJ Evaluation at 17.

5. Phantom "Glue" Charges. SWBT imposes a "phantom glue" nonrecurring charge of \$20.47 on every UNE-P order. The TPUC has represented to a federal court that this charge "is on top of TELRIC." The record of State regulatory and court proceedings confirm that there is no finding that these charges are cost-based (nor any evidentiary basis for such a finding), and that the TPUC approved it in response to the 8th Circuit's since-vacated ruling that ILECs may separate pre-existing combinations of UNEs. SWBT has now attempted to escape Commission and D.C. Circuit Court review of this charge by claiming that it has "[e]liminat[ed]" the glue charges "pending completion of an ongoing TPUC proceeding." In fact, SWBT has not eliminated the glue charge but merely "offer[ed]" to refrain from collecting it "subject to true-up" based on further TPUC proceedings. The TPUC has not addressed this issue since SWBT offered to refrain from collecting the charge (subject to true up). Nonetheless, following the MOU negotiated in private between SWBT and the TPUC retaining these charges, the TPUC without explanation, repudiated its prior findings that the glue charges are not cost-based, and supported these charges in its comments as cost-based (though there is no record support for such a conclusion). SWBT is thus asking this Commission to approve its Application notwithstanding that the Commission does not know a significant UNE rate that will apply at the time the Commission rules on the Application. While the Commission has expressed a willingness -- given the existence of certain "confidence building" factors -- to rely on "a limited number" of interim rates (BA-NY Order ¶ 260), none of those factors is present here.

6. Intellectual Property. SBC maintains that CLECs may not use UNEs that may be covered by restrictive vendor licensing agreements without obtaining licenses directly from SBC's vendors. Section 251(c)(3)'s nondiscrimination obligations require an ILEC to modify its intellectual property licenses where necessary to enable it to comply with its UNE access obligations. The FCC found as much in its Infrastructure Sharing order (concerning the sharing of network facilities between large and small ILECs), and the Fourth Circuit Court of Appeals

recently reached the same conclusion concerning section 251(c)(3). The discrimination inherent in SBC's position is underscored by the fact that, as SBC has conceded and the TPUC staff has found, SBC's UNE rates generally include the cost of SBC's licenses for any embedded intellectual property. The application cannot be approved until SBC agrees to indemnify CLECs against any infringement claims that might be raised by SBC's vendors or obtains any necessary licensing agreements. Because this requirement derives directly from the statute, compliance cannot be postponed.

7. Interconnection. Rather than respond to AT&T's showing that SWBT unlawfully bars CLECs from interconnecting at any technically feasible point, SWBT has chosen, in its Reply, to mischaracterize AT&T's contention as being that SWBT requires interconnection in each central office. That is not AT&T's point. Rather, SWBT's unlawful interconnection requirement forces CLECs to establish direct trunks to each and every central office in any exchange not served by a local tandem, which affects 30% to 35% of the central offices and remote switches in Texas. This requirement has already materially delayed AT&T's local market entry in the Dallas area, and prevents efficient planning of other market entries.

8. Collocation. Contrary to SWBT's contention, the "interim" rates adopted by the TPUC for SWBT's revised collocation tariffs do not meet the requirements for "interim" rates set forth in the BA-NY Order. Unlike the situation in the Bell Atlantic application, where the Commission found that interim rates might be acceptable in support of a 271 application where they are "isolated ancillary items" (BA-NY Order ¶ 251-52, 258), the interim rates offered by SWBT apply to every rate in its Revised Virtual and Physical Collocation Tariffs. Moreover, there is no assurance that the corresponding rates that will ultimately be established in the permanent proceeding will comply with TELRIC, because the TPUC's rate order permits reconsideration of both the amount and scope of cost inputs, thereby creating the potential for substantial changes to the existing rate elements which may or may not conform to TELRIC.

9. Section 272. SWBT has (1) failed to provide any justification for its inadequate transaction disclosures for services it provides to its Section 272 affiliate, (2) failed to make the required Internet disclosures of details concerning its transactions with that affiliate, (3) failed to disclose such transactions in a timely manner, and (4) failed to justify its predatory "growth tariff", which, although rejected by the TPUC on March 1st, constitutes powerful evidence that SWBT would not act in compliance with the requirements of Section 272. See Ameritech-Michigan Order ¶ 347.